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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,945	10/12/2004	Brendon Lilly	120496	8467
25944 7590 02/20/2007 OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			EXAMINER DESTA, ELIAS	
			ART UNIT 2857	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	
3 MONTHS			02/20/2007	
			DELIVERY MODE PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/501,945

Applicant(s)

LILLY, BRENDON

Examiner

Elias Desta

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/24/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-20 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-20 and 22-25 is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Explanation of rejection

Claim rejection – 35 U.S.C. 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-5 and 7-15 are directed to non-statutory subject matter. In reference to claim 1: the output from the system that includes “evaluating a performance of at least one machine operator based on the at least one calculated performance indicator” is not useful, tangible and concrete.

The claimed invention as a whole must accomplish a practical application. That is, it must produce a “useful, concrete and tangible result.” State Street, 149 F.3d at 1373, 47 USPQ2d at 1601-02. The purpose of this requirement is to limit patent protection to inventions that possess a certain level of “real world” value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research (Brenner v. Manson, 383 U.S. 519, 528-36, 148 USPQ 689, 693-96); In re Ziegler, 992, F.2d 1197, 1200-03, 26 USPQ2d 1600, 1603-06 (Fed. Cir. 1993)).

A claim is limited to a practical application when the method, as claimed, produces a concrete, tangible and useful result; i.e., the method recites a step or act of producing something

Art Unit: 2857

that is concrete, tangible and useful. Referring to the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" in determining whether the claim is for a "practical application," the focus is not on whether the steps taken to achieve a particular result are useful, tangible and concrete, but rather that the final result achieved by the claimed invention is "useful, tangible and concrete."

The step of "evaluating a performance of at least one machine operator based on the at least one calculated performance indicator" does not constitute an output that is considered useful, concrete and tangible. Simply evaluating performance of one machine operator based on a calculated performance indicator value does not amount to monitoring the performance of the machine operator. However, the outcome is useful and has a potential to do something concrete and tangible if it is carried out by further process, such as carrying out some measurable quantity that can be further used to improve some performance parameter and conveyed to the outside world in useful, concrete and tangible manner. However, in the instant case, the absence of a useful, concrete and tangible result makes the claimed invention to be non-statutory.

Allowable Subject Matter

3. Claims 16-20 and 22-25 are allowed. The following is an examiner's statement of reasons for allowance:

In reference to claims 16-20 and 22-25: *Remboski et al.* (US. PAP 2002/0116156, hereon Remboski) teaches a system for monitoring the performance of at least one machine operator comprising:

Art Unit: 2857

- A measuring device for measuring at least one machine parameter during the operation of the machine by the operator, the machine operator related to the operation of the machine by the operator (see Remboski, paragraph 62);
- A means for measuring at least one machine parameter (see Remboski, Fig. 4, steps 402-408); and
- A module for calculating at least one performance indicator for the machine operator from the parameter (see Remboski, Fig. 4, step 410).

Remboski, however, does not specify a remote server for generating the performance indicators or does not teach a performance indicator distribution comprising a range of values being used to calculate a performance indicator.

On the other hand, the claimed invention includes the step of segmenting at least one machine parameter that is a dependent machine parameter, into segments where at least one dependent machine parameter exists. The range of each segment constitutes a segment resolution, which is used for generating at least one performance indicator distribution from measurements of a machine parameter, then a performance indicator is computed for at one machine operator. Eventually, the performance indicator is used to monitor the performance of the machine operator.

Claims 17-20 and 22-25 are dependent upon claim 16 and contain further limitation

Response to Argument

4. Applicant's amendments, filed 11/24/2006 have been fully considered but the Examiner believes that claims 1-15 do not meet the 35 U.S.C. 101 requirements.

In reference to claim 1, simply evaluating performance of a machine operator based on a calculated performance indicator does not amount to monitoring the performance of the machine operator. However, the outcome is useful and has a potential to do something concrete and tangible if it is carried out by further process, such as carrying out some measurable quantity that can be further used to improve some performance parameter and conveyed to the outside world in useful, concrete and tangible manner.

The Examiner acknowledges and accepts the replacement drawings, which clarify Figs. 1-11 and replace the original sheets.

Conclusion

5. ***THIS ACTION IS MADE FINAL.*** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 2857

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elias Desta whose telephone number is (571)-272-2214. The examiner can normally be reached on M-Th (8:30-7:00).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on (571)-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Elias Desta
Examiner
Art Unit 2857

- E.d.

- February 8, 2007


HAL WACHSMANN
PRIMARY EXAMINER
AU 2857